

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

OCT 23 2008

DAVID J. WILSON, CLERK

BY  
DEPUTY

UNITED STATES OF AMERICA

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§  
§  
§  
§

v.

CASE NO. 4:03CR21

MARC A. MCCABE

**REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on October 20, 2008 to determine whether the Defendant violated his supervised release. The Defendant was represented by Denise Benson. The Government was represented by Tracey Batson.

On August 22, 2003, the Defendant was sentenced by the Honorable Paul Brown, United States District Judge, to 3 years probation for the offense of False Statement, but the term of probation was revoked on June 29, 2006 and Defendant was sentenced to 6 months imprisonment followed by 30 months of supervised release. On December 1, 2006, Defendant was released from custody and ordered to commence service of a 30-month term of supervised release. On June 16, 2008, this matter was re-assigned to the Honorable Marcia A. Crone, United States District Judge.

On September 25, 2008, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (Dkt. 36). The petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall refrain from any unlawful use of a controlled substance; and (2) Defendant shall refrain from excessive use of alcohol and shall not purchase,

possess, use distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.


The petition and amended petition allege that Defendant committed the following violations: (1) on June 4, 2008 and June 16, 2008, Defendant submitted a urine specimen which tested positive for marijuana, and Defendant admitted to using marijuana on two separate occasions; and (2) Defendant denied any further use following the June 16, 2008 test, but Kroll Laboratories reported that July 2, 2008 and July 16, 2008 specimens contained a nanogram level of 27 which indicated new use between specimens.

Prior to the Government putting on its case, Defendant entered a plea of true to the alleged violations. Defendant also waived allocution before a district judge. At the hearing, the Court recommended that Defendant's supervised release be revoked based on those violations.

#### **RECOMMENDATION**

Having heard the argument of counsel, the Court recommends that the District Court revoke the Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that the Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of five (5) months, with no supervised release to follow.

SIGNED this 22 day of Oct, 2008.

  
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DON D. BUSH  
UNITED STATES MAGISTRATE JUDGE